



Legislation Text

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990440
SUBSTITUTE 1

THE CHAIR

Substitute resolution authorizing the issuance of Industrial Development Revenue Bonds (Goodwill Industries of Southeastern Wisconsin and Metropolitan Chicago, Inc. Issue - Series 1999).

- Analysis -

This substitute resolution authorizes the issuance of \$7,675,000 of industrial development revenue bonds to finance costs related to the acquisition, construction, improvement and equipping of facilities by Goodwill Industries of Southeastern Wisconsin and Metropolitan Chicago, Inc., all of which are to be owned and operated by Goodwill Industries of Southeastern Wisconsin and Metropolitan Chicago, Inc. Whereas, The City of Milwaukee, Wisconsin (the "Municipality"), is a municipal corporation organized and existing under and pursuant to the laws of the State of Wisconsin and is authorized by Section 66.521, Wisconsin Statutes, as amended (the "Act"):

- (a) To issue industrial development revenue bonds to finance all or any part of the costs of the construction, equipping, reequipping, acquisition, purchase, installation, reconstruction, rebuilding, rehabilitation, improving, supplementing, maintaining, repairing, enlarging, extending or remodeling of a project which qualifies under the Act and the improvement of the site therefor.
- (b) To enter into a revenue agreement with an eligible participant pursuant to which the eligible participant agrees to cause said project to be constructed and to pay the municipality an amount of funds sufficient to provide for the prompt payment when due of the principal of and interest on said industrial development revenue bonds.
- (c) To finance an industrial project which is located entirely outside the geographic limits of the municipality, but only if the revenue agreement with respect to such project also relates to another project of the same eligible participant some part of which is located within such limits; and

Whereas, Goodwill Industries of Southeastern Wisconsin and Metropolitan Chicago, Inc., a Wisconsin, nonstock, nonprofit corporation (the "Borrower"), has requested the Municipality to issue industrial development revenue bonds to finance projects in the Municipality and the Cities of Waukesha and Racine, Wisconsin on behalf of the Borrower as an eligible participant under the Act; and

Whereas, The Common Council of the City of Milwaukee (the "Common Council") has found and determined that said projects consisting of the construction of an addition to the current facility for processing and assembly, the acquisition and installation of production equipment, the replacing of the roof on the existing building, and renovation of workshop restroom facilities at the Municipality facility; the construction and equipping of a new facility for job training, counseling, and storage in Waukesha; and the construction of an addition to the current facility for processing and assembly at the Racine facility (the "Projects") are each qualified "projects" within the meaning of the Act and that the Borrower is an "eligible participant" within the meaning of the Act; and

Whereas, At least 30 days prior to entering into the revenue agreement, the Borrower gave notice of intent to enter into the revenue agreement and provided information on the number of jobs the Borrower expects to be eliminated, created or maintained on the Project sites and elsewhere in this State by the Projects, to the Department of Commerce of the State of Wisconsin and to any collective bargaining agent in the State of Wisconsin with whom the Borrower has a collective bargaining agreement; and

Whereas, The Municipality has received from the Department of Commerce of the State of Wisconsin an estimate of the net number of jobs expected to be eliminated, created or maintained as a result of the Projects; and

Whereas, On May 11, 1999, the Common Council adopted an initial resolution pursuant to the Act wherein it was resolved that the Municipality would issue industrial development revenue bonds to finance the Projects, subject however, to the satisfaction of certain conditions including the approval by the Common Council of the terms of the bonds and the revenue agreement described in said initial resolution; and

Whereas, On May 24, 1999, notice of the adoption of the initial resolution was published in accordance with Section (10)(b) of the Act, and notice of adoption of the waiver resolution was published in accordance with Section (11)(b)2. of the Act, and no sufficient petition has been filed with the City Clerk requesting a referendum on the question of the issuance of said industrial development revenue bonds; and

Whereas, On July 1, 1999, a public hearing was held at the offices of the Department of City Development, 809 North Broadway, Milwaukee, Wisconsin, and conducted in a manner that provided a reasonable opportunity to be heard for persons with differing views on both issuance of revenue bonds and the location and nature of the proposed facility to be financed with revenue bonds; and

Whereas, Notice of the public hearing, substantially in the same form as Exhibit A, a copy of which is attached to this Common Council File, was published by one insertion in the Milwaukee Journal Sentinel no less than 14 days before the scheduled date of the hearing; and

Whereas, The Borrower has now requested that the Municipality provide for the issuance of \$7,675,000 principal amount of industrial development revenue bonds upon the terms set forth in this Resolution (as herein described, the "Bonds"); and

Whereas, In connection therewith the Borrower has presented the Municipality with proposed documentation for the Bonds, as follows:

(a) A Bond Placement Agreement (the "Bond Placement Agreement"), to be entered into by and among the Municipality, the Borrower, and Fleet Securities, Inc. (the "Placement Agent"), setting forth the terms and conditions on which the Municipality will sell and the Placement Agent will use its best efforts to obtain a purchaser for the Bonds.

(b) A Loan and Trust Agreement (the "Agreement"), to be entered into by and among the Municipality, the Borrower and the corporate trustee hereinafter designated (the "Trustee") providing for the Municipality's issuance of the Bonds, a loan of the Bond proceeds to the Borrower on repayment terms made to the Issuer through payments to the Trustee scheduled to provide the Municipality with revenues sufficient to retire the Bonds in accordance with their terms, and the Municipality's assignment to the Trustee in trust of the Municipality's rights under the Agreement and the revenues received.

(c) A Private Placement Memorandum (the "Private Placement Memorandum"), describing the Bonds and the security and source of payment therefor.

(d) A Letter of Credit to be dated the date of issuance of the Bonds (the "Credit Facility"), to be issued by Firststar Bank Milwaukee, N.A., Milwaukee, Wisconsin (the "Credit Facility Provider"), to provide for the payment of the principal and interest on the Bonds; and

Whereas, In accordance with the Act, this Resolution and the aforesaid instruments and documents, the Bonds and interest thereon shall never constitute an indebtedness of the Municipality within the meaning of any State constitutional provision or statutory limitation, shall not constitute or give rise to a pecuniary liability of the Municipality or a charge against its general credit or taxing powers, and shall not constitute or give rise to any personal liability of any member of the Common Council or of any officials or employees of the Municipality on the Bonds or for any act or omission related to the authorization or issuance of the Bonds; and

Whereas, It is in the public interest of the Municipality to encourage and promote the development of projects such as the Projects in order to realize public benefits such as, but not limited to, the furtherance of the Borrower's charitable purposes; the provision and retention of gainful employment opportunities for the citizens of the Municipality; the stimulation of the flow of investment capital into the Municipality with resultant beneficial effects on the economy in the Municipality; and the strengthening of the Borrower's presence in the region; and

Whereas, It is the finding and determination of the Common Council that the public interest will be served if the Municipality were to encourage and induce the Borrower to undertake the Projects in the Municipality, Waukesha, and Racine; and

Whereas, The development of the Projects and the issuance of Bonds to finance the Projects as herein recited will, in the judgment of the Common Council, serve the intended accomplishments of public purpose and in all respects conform to the provisions and requirements of the Act; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee that:

1. It has been found and determined and is declared:

(a) That each Project is a qualified "project" under and for the purposes of the Act.

(b) That the Borrower is a qualified "eligible participant" under and for the purposes of the Act.

(c) That the Agreement meets the requirements of a "revenue agreement" under and for the purposes of the Act.

(d) That the estimated aggregate cost of providing the Projects and paying the costs incidental to the financing is not less than \$7,675,000.

(e) That the payments required to be made by the Borrower under the Agreement are sufficient in amount to pay when due the principal of, premium, if any, and interest on the Bonds.

(f) That the Placement Agent is qualified to act as remarketing agent (in such capacity, the "Remarketing Agent") in determining the interest rate on the Bonds as provided in the Agreement.

(g) That all conditions set forth in said Initial Resolution have been satisfactorily met.

2. The Municipality shall borrow, but only in the manner herein recited, a sum not to exceed \$7,675,000 for the purpose of financing the Projects. Said borrowing shall be accomplished through the sale of the Bonds issued pursuant to the Act. The Municipality shall lend a sum of \$7,675,000 to the Borrower pursuant to the terms of the Agreement. The Agreement is approved as necessary to effectuate the purposes of the Act. The Mayor, the City Clerk and the City Comptroller are authorized and directed for and in the name of the Municipality to execute and deliver the Agreement in the form thereof presented herewith or with such insertions therein or corrections thereto as shall be approved by them consistent with this resolution, their execution thereof to constitute conclusive evidence of their approval of any such insertions and corrections.

3. The Bonds shall be issued in the aggregate principal amount of \$7,675,000, shall become due and payable on July 1, 2019, and shall be

designated:

CITY OF MILWAUKEE, WISCONSIN INDUSTRIAL DEVELOPMENT REVENUE BONDS (GOODWILL INDUSTRIES OF SOUTHEASTERN WISCONSIN AND METROPOLITAN CHICAGO, INC. ISSUE - SERIES 1999)

As used herein, the following terms shall have the following respective meanings:

"Business Day" means a day (i) that is not a Saturday, Sunday or legal holiday, (ii) on which banking institutions in all of the cities in which the principal corporate trust office of the Trustee, the office of the Credit Facility Provider at which draws under the Credit Facility are to be presented and the principal office of the Remarketing Agent are located are not required or authorized to remain closed and (iii) on which the New York Stock Exchange is not closed.

"Effective Date" means the date on which a new Rate Period takes effect. Prior to the Fixed Rate Conversion Date, the Effective Date shall initially be the date of issuance of the Bonds and thereafter be each Wednesday and each mandatory tender date.

"Effective Rate" means, for any Rate Period, the Weekly Rate or other rate of interest in effect for such Rate Period as hereinafter provided.

"Fixed Rate" means a rate or rates of interest on the Bonds that is fixed for the remaining term of the Bonds.

"Fixed Rate Conversion Date" means the date upon which the Fixed Rate first becomes effective for the Bonds.

"Interest Accrual Period" means (i) a calendar month or (ii) a portion of a calendar month from the date of issuance of the Bonds or to the maturity date of the Bonds, a mandatory tender date, or a redemption date.

"Interest Index" means that indication of the lowest interest rate appropriate for bonds similar to the Bonds being priced in terms of security, creditworthiness, term and tender privilege which will permit the Bonds to be sold at a purchase price equal (excluding accrued interest) to their principal amount determined first by interviewing three investors of portfolios holding significant numbers of such bonds (but who are not Bondowners) and second, if that is not practicable, by referring to the best available database or publication of national recognition containing a recent calculation of such an interest rate for comparable securities.

"Interest Payment Date" means each date on which interest shall be payable on the Bonds according to their terms so long as any of the Bonds shall be outstanding. Prior to the Fixed Rate Conversion Date, if any, the Interest Payment Dates shall be the first Business Day of each calendar month for the preceding Interest Accrual Period; and from and after the Fixed Rate Conversion Date, the Interest Payment Dates shall be the first day of January and July of each year, commencing with a January 1 or July 1 specified by the Borrower in writing to the Trustee which is at least two but less than ten months after the Fixed Rate Conversion Date. As to any Bond, whether before or after the Fixed Rate Conversion Date, the maturity date or redemption date thereof shall also be an Interest Payment Date.

"Maximum Interest Rate" means 12 percent per annum.

"Rate Period" means, prior to the Fixed Rate Conversion Date, each one week period (or slightly shorter period for the initial Rate Period or in the case of redemption, mandatory tender or maturity) which commences initially on the date of issuance of the Bonds and thereafter on Wednesday of each calendar week or any mandatory tender date and ends on the following Tuesday or the day before a mandatory tender date or final maturity date of the Bonds.

"Weekly Rate" means the rate of interest determined by the Remarketing Agent for each Rate Period to be the lowest rate which in its judgment, on the basis of prevailing financial market conditions, would permit the sale of the Bonds at par plus accrued interest on and as of the Effective Date, but not in excess of the Maximum Interest Rate.

From the date of issuance of the Bonds and prior to the Fixed Rate Conversion Date, if any, the Effective Rate in effect for each Rate Period shall be determined not later than the Effective Date, and shall be equal to the Weekly Rate or such other rate as may be determined as described below. The Weekly Rate for the Bonds shall be the rate of interest determined by the Remarketing Agent designated as provided in the Agreement, for each Rate Period, to be the lowest rate which in its judgment, on the basis of prevailing financial market conditions, would permit the sale of the Bonds at par plus accrued interest on and as of the Effective Date, but not in excess of the Maximum Interest Rate. The Remarketing Agent shall determine the initial Weekly Rate on or before the date of issue of the Bonds, which rate shall remain in effect as provided in the Agreement. Thereafter, the Remarketing Agent shall redetermine the Weekly Rate for each Rate Period. If for any reason the Weekly Rate on the Bonds cannot be established for any Rate Period as described above or is held invalid or unenforceable by a court of law, the Effective Rate during such Rate Period will be a rate determined by the Remarketing Agent which is not less than 90 percent nor more than 130 percent of the Interest Index. If for any reason the interest rate on the Bonds for the applicable Rate Period cannot be established as described in the preceding sentence, the Effective Rate for such Rate Period will equal the Interest Index as determined by the Remarketing Agent. In no event will the Effective Rate exceed the Maximum Interest Rate. If for any reason the Remarketing Agent fails to announce the Effective Rate as provided in the Agreement for any Rate Period, the Effective Rate for that Rate Period shall be the same as the Effective Rate for the prior Rate Period.

At the option of the Borrower and upon certain conditions provided for in the Agreement, the interest rate on the Bonds may be converted in whole and not in part on any Interest Payment Date to the Fixed Rate. Upon receipt of the notice of conversion to the Fixed Rate from the Borrower, the Remarketing Agent shall determine the Fixed Rate not later than 2:00 p.m. on the second Business Day before the Fixed Rate Conversion Date. The Fixed Rate shall be the lowest rate which in the judgment of the Remarketing Agent, on the basis of prevailing financial market conditions, would permit the sale of the Bonds at par plus accrued interest as of the Fixed Rate Conversion Date on the basis of their

terms as converted. The Fixed Rate shall become effective on the Fixed Rate Conversion Date and shall remain in effect for the remaining term of the Bonds.

Prior to the Fixed Rate Conversion Date, interest shall be computed on the basis of a 365 or 366-day year, as appropriate, and actual days elapsed. After the Fixed Rate Conversion Date, interest shall be computed on the basis of a 360-day year consisting of twelve 30-day months from the most recent Interest Payment Date to which interest has been paid or duly provided for or, if no interest has been paid, from the date of the Bond, at the interest rate per annum, payable semiannually on the Interest Payment Dates, until the date on which the Bond becomes due. From and after the date on which the Bonds become due, any unpaid principal will bear interest at the then effective interest rate until paid or duly provided for or until the Bonds have been accelerated, but unpaid interest shall not continue to bear interest after its due date.

The Bonds shall be issuable as fully registered bonds in denominations of \$100,000 or any multiple of \$5,000 in excess thereof (except as otherwise provided in the Agreement), and when issued will be registered in the name of Cede & Co., as registered owner and nominee for The Depository Trust Company, New York, New York ("DTC"). The beneficial owners of the Bonds will not receive physical delivery of bond certificates. Beneficial ownership will be evidenced by book-entry only. Bonds and the interest thereon shall be transferable by and shall be payable to the registered owners thereof in the manner and with the effect provided in the Agreement. The principal of, premium, if any, and interest on the Bonds shall be payable in lawful money of the United States of America at the principal corporate trust office of the Trustee, as paying agent, or the office of any successor or additional paying agent designated by the Municipality and approved by the Borrower.

The Bonds shall be issued in the form therefor as set forth in the Agreement, with such insertions therein as shall be necessary to comply with the terms of this Resolution and with such corrections therein, if any, as the approving bond attorney may require for conformity with the terms of this Resolution, the Agreement and the Act.

4. The Bonds shall be executed on behalf of the Municipality with the facsimile or manual signature of its Mayor and its City Clerk, countersigned with the facsimile or manual signature of its City Comptroller and shall have impressed, imprinted or otherwise reproduced thereon an official seal of the Municipality or a facsimile thereof. No Bond shall be issued unless first authenticated by the Trustee (as fiscal agent and bond registrar), to be evidenced by the manual signature of an authorized signatory of the Trustee on each Bond.

5. The Municipality designates and appoints Fleet Securities, Inc. to perform the functions of Remarketing Agent and Firststar Bank Milwaukee, N.A., Milwaukee, Wisconsin to perform the functions of Trustee under the Agreement.

6. The Bonds and interest thereon shall never be or be considered a general obligation of the Municipality or an indebtedness of the Municipality within the meaning of any State constitutional provision or statutory limitation and shall not constitute or give rise to a pecuniary liability of the Municipality or a charge against its general credit or taxing powers.

7. The Bonds shall be limited obligations of the Municipality payable by it solely from revenues and income derived by or for the account of the Municipality from or for the account of the Borrower pursuant to the terms of the Agreement; including without limitation: (i) amounts derived pursuant to the Credit Facility, (ii) payments by the Borrower pursuant to the terms of the Agreement, and (iii) all cash and securities held from time to time in the trust funds created under the Agreement, and the investment earnings thereon; but excluding any amounts derived by the Municipality for its own account pursuant to the terms of the Agreement.

As security for the payment of the principal of, premium, if any, and interest on the Bonds, the Municipality shall pledge and assign to the Trustee all of its right, title and interest (i) in respect of the Agreement and all payments thereon, (ii) in all moneys and securities held by the Trustee for deposit in, or deposited in, the Bond Fund, the Construction Fund and the Credit Facility Fund created under the Agreement and investment earnings thereon described in the Agreement, and (iii) all proceeds of any of the foregoing.

8. The Bonds shall be subject to mandatory and optional redemption prior to maturity, and optional and mandatory tender for purchase, as provided in the Agreement.

9. The trust funds and accounts created under the Agreement to be held in the custody of the Trustee and applied for the uses and purposes provided in the Agreement are authorized and approved.

10. Any moneys held as a part the trust funds held by the Trustee under the Agreement may be invested and reinvested by the Trustee in "Permitted Investments" in accordance with, and as defined in, the Agreement.

11. The terms and provisions of the Credit Facility and the Agreement are approved.

12. The Borrower has negotiated for the sale of the Bonds by the Placement Agent at a price of 100 percent of the principal amount of the Bonds. Given the purposes of the financing and the involvement of the Municipality therewith, it is the determination of the Common Council that the Bonds shall be awarded to such purchasers as may be arranged by the Placement Agent at the price aforesaid with delivery to follow in the manner, at the time and subject to the conditions set forth in the Bond Placement Agreement. As evidence thereof the Mayor, the City Clerk and, where appropriate, the City Comptroller are authorized and directed for and in the name of the Municipality to execute, affix with the official seal of the Municipality and deliver the Bond Placement Agreement in the form presented herewith, or with such insertions therein or corrections thereto as shall be approved by the Mayor and the City Clerk consistent with this Resolution and the terms of the Act, their execution thereof to constitute conclusive evidence of their approval of any such insertions and corrections.

13. The distribution by the Placement Agent of the Private Placement Memorandum in connection with the offering and sale of the Bonds is authorized and approved.

14. The Mayor, the City Clerk and the City Comptroller are authorized for and in the name of the Municipality to execute the Bonds in the manner authorized by paragraph 4 of this Resolution. Subject to the terms and conditions of the Bond Placement Agreement, the Issuer shall deliver the Bonds to the Placement Agent.

15. The Mayor and the City Clerk and the appropriate deputies and officials of the Municipality in accordance with their assigned responsibilities are each authorized to execute, deliver, publish, file and record such other documents, instruments, notices (including, without limitation, the Internal Revenue Service Form 8038) and records and to take such other actions as shall be necessary or desirable to accomplish the purposes of this Resolution and to comply with and perform the obligations of the Municipality under the Bond Placement Agreement, the Bonds, and the Agreement.

In the event that any of said officials shall be unable by reason of death, disability, absence or vacancy of office to perform in timely fashion any of the duties specified herein (such as the execution of the Bond Placement Agreement, the Bonds or the Agreement), such duties shall be performed by the officer or official succeeding to such duties in accordance with law and the rules of the Municipality.

16. This Resolution shall be effective immediately upon its passage and approval. To the extent that any prior resolutions of the Common Council are inconsistent with the provisions hereof, this resolution shall control and such prior resolutions shall be deemed amended to such extent as may be necessary to bring them in conformity with this Resolution.

17. The Mayor, the City Clerk and the City Comptroller shall not execute and deliver the Agreement as provided in paragraph 2 of this Resolution unless simultaneously with the issuance of the Bonds, the Borrower shall enter into a Disadvantaged Business Enterprise Agreement (the "Business Agreement") with the Municipality, in a form satisfactory to the Municipality, providing for the Borrower to make a "good faith effort," as defined in the Business Agreement, to utilize certified "Disadvantage Business Enterprises," as defined in the Business Agreement, in the construction of the Project.

18. Notice of the sale of the Bonds, in the form of Exhibit B, a copy of which is attached to this Common Council File, shall be published forthwith in the official newspaper of the Municipality as a class 1 notice under Chapter 985 of the Wisconsin Statutes. The City Clerk of the Municipality shall obtain proof in affidavit form, of such publication, and shall compare the notice as printed with the form of Exhibit B to ascertain that no mistake has been made therein.

19. The Common Council, on behalf of the Municipality, approves the issuance of the Bonds for the purposes of Section 147(f) of the Internal Revenue Code of 1986, as amended.

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